

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

UNITED STATES OF AMERICA,	:	
	:	
JORGE PETER CORNELL,	:	1:11CR402-1
also known as “King J” and	:	SUPERSEDING
“King Jay”	:	
RUSSELL LLOYD KILFOIL,	:	1:11CR402-2
also known as “King Peaceful” and	:	
“Jonathan Hernandez”	:	
RANDOLPH LEIF KILFOIL,	:	1:11CR402-3
also known as “King Paul”	:	
SAMUEL ISAAC VELASQUEZ,	:	1:11CR402-9
also known as “King Hype”	:	
IRVIN VASQUEZ,	:	1:11CR402-12
also known as “King Dice”	:	
ERNESTO WILSON,	:	1:11CR402-14
also known as “King Yayo”	:	

GOVERNMENT’S SUPPLEMENTAL REQUEST FOR INSTRUCTION TO THE JURY

NOW COMES the United States of America, by its undersigned counsel, and hereby makes a supplementary request for a jury instruction regarding the arson or unlawful burning of a building (an uninhabited house)(N.C.G.S. 14-62 – Burning of Certain Building includes an uninhabited house).

In support of this motion, the Government shows the Court the following:

Under the RICO statute, 18 U.S.C. § 1961(1), various racketeering acts are identified as any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, etc., chargeable under state law and punishable by imprisonment for more than one year. It is the contention of the Government that the definition of arson in its generic form includes N.C.G.S. § 14-62 –Burning of certain buildings (unoccupied house) and is a racketeering act under 18 U.S.C. § 1961(1).

The Fourth Circuit in United States v. Knight, 606 F.3d 171, 173-174 (CA 4, (N.C.) 2010), discussed the generic definition of arson in analyzing the Texas arson statute. The Court

concluded it met the generic definition and found it to be a crime of violence under the sentencing guidelines. Recently, in an unpublished case, United States v. Moore, 472 Fed.Appx. 212, 2012 WL 1021844 (C.A. 4 (NC.) 2012), the Knight case was cited in determining that N.C.G.S. § 14-60, Burning of a school house, satisfied the generic definition of arson and, therefore, was a violent felony under the Armed Career Criminal Act.

The Government contends that the elements of N.C.G.S. § 14-62 - Burning of certain buildings, are substantially similar to N.C.G.S. § 14-60, Burning of a school house, and should be submitted under the term arson Burning of certain buildings. N.C.G.S. § 14-62 is a Class F felony that is punishable by imprisonment for more than one year. The elements are:

1. wantonly or willfully
2. sets fire to, burns, or causes to be burned, or aids, counsels or procures the burning of
3. an uninhabited house.

Respectfully submitted, this the 14th day of November, 2012.

RIPLEY RAND
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IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA

UNITED STATES OF AMERICA	:	Case 1:11CR402
	:	SUPERSEDING
	:	
JORGE PETER CORNELL, et al.	:	CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of November, 2012, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following: Michael W. Patrick, attorney for Jorge Peter Cornell (1), Brian M. Aus, attorney for Russell Lloyd Kilfoil (2), Christopher B. Shella, attorney for Randolph Leif Kilfoil (3), Mark Everette Edwards, attorney for Samuel Isaac Velasquez (9), Helen L. Parsonage, attorney for Irvin Vasquez (12) and Scott C. Holmes, attorney for Ernesto Wilson (14)

Respectfully submitted,
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